

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544**

In the Matter of the Federal-State Joint Board)	
on Universal Service)	CC Docket No. 96-45
)	
Notice of Proposed Rulemaking Seeking)	
Comment on the <i>Recommended Decision</i> of)	
the Federal-State Joint Board on Universal)	
Service Concerning the Process for)	
Designation of Eligible Telecommunications)	
Carriers and the Commission's Rules)	
Regarding High-Cost Universal Service)	
Support.)	
_____)	

COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION

In response to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") released June 8, 2004, the Alaska Telephone Association (collectively "ATA")¹ files these comments concerning the process for designation of eligible telecommunications carriers ("ETCs") and the Commission's rules regarding high-cost universal service support.

Each ATA member is a rural incumbent local exchange carrier ("ILEC") and a recipient of high-cost universal service support. Among the communities served are

¹The Alaska Telephone Association is a trade association comprised of rural Alaska local exchange telephone companies. Its active members are Alaska Telephone Company; Arctic Slope Telephone Association Cooperative; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative; KPU Telecommunications; Matanuska Telephone Association; Nushagak Electric & Telephone Cooperative, Inc.; OTZ Telephone Cooperative; Summit Telephone Company, Inc., TelAlaska, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc.

some of the most remote and inaccessible in the nation. A majority of the communities are not on the road system. Physical access is by air and, often, water and seasonal weather conditions frequently hinder travel. Communications services are vital to the isolated residents and businesses in rural Alaska.

Due to the remote locations, terrain, weather and small populations, rural Alaskans are dependent upon universal service policy to maintain affordable, high quality telecommunications access to the ubiquitous network. The decisions of the Commission in this docket are crucial to these Alaskans.

It is imperative that universal service support for high cost study areas be maintained at a sufficient level and that confidence in the continuation of that support be sufficiently apparent that investment for maintenance and infrastructure development not be chilled. Neither providers nor investors will risk capital without some reasonable expectation of a return on that investment.

Permissive Federal Guidelines in ETC Proceedings

We appreciate the Joint Board's recommendation to adopt permissive federal guidelines for states to use when determining whether applicants are qualified to be designated as ETCs under section 214² as the recommendation demonstrates a recognition by the Joint Board of a dearth of criteria in previous ETC decisions. We encourage the Commission to set meaningful standards, but propose that those minimum

² Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4261 (2004)(*Recommended Decision*), para 9.

standards should be mandatory rather than permissive. State commissions already have the authority to use “minimum permissive standards.” It is their demonstration of those minimalist standards that caused the Joint Board to offer its recommendation.

Mandatory minimum standards, more than anything else, might go far toward limiting the growth of the universal service fund. There is an obvious dichotomy between a public interest determination for an ETC designation made at state level and the public interest impact of that decision at the national level. A state commission, perhaps rightfully, can conclude that the influx of dollars from a national source that would accompany an affirmative ETC decision satisfies the public interest determination by bringing new revenues into the state. In combination with similar decisions made in other states, the national public interest can well be negatively impacted by the increased demand on the universal service fund. Of course that negative impact is ultimately felt in the state.

Although here discussed in the future tense, this issue is at the heart of this NPRM. The primary line proposals and the ETC standards proposals are aimed at protecting the universal service fund at the expense of universal service. Through a combination of schools and libraries programs, rural health care programs and on the altar of “competitive neutrality,” the political and regulatory focus has shifted from providing quality telecommunications service in high cost, rural communities to limiting the amount of support available to those communities.

Prior to consideration of the designation of a competitive ETC under such guidelines, a state commission should consider if a competitive environment is justified.

“[T]here are certain areas of this country where it is so expensive to provide service that it makes no sense to have more than one carrier subsidized by the federal universal service fund,” commented one member of the Joint Board.³ Another stated “I remain hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier.”⁴ The “shall-may” language of section 214 of the Act certainly seems to indicate that even Congress thought there are areas where the public interest would not be served by granting public funds (USF support) to multiple carriers to duplicate facilities and services.

Perhaps the first question that should be asked by any regulatory body in the consideration of an ETC application should be whether there are any unserved areas and, if so, what is the most cost-effective method to serve them. The additional funding for infrastructure extension to an ILEC with carrier of last resort (“COLR”) responsibility might have a comparatively miniscule effect on the universal service fund when compared with the designation of a competitive ETC for the same area.

Not long ago, high-cost universal service funding assured local exchange carriers that in carrying out their COLR duties and fulfilling that social contract, they would be able to offer customers service at affordable rates and still be able to recover the costs associated with operations, construction and maintenance of the network. In the post-1996 era, with the advent of “competitively neutral,” the distribution of high-cost universal service support has been broadened considerably. Among state commissions

³ See *Recommended Decision*, Separate Statement of Billy Jack Gregg, 19 FCC Rcd at 4314-15.

⁴ See *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin, 19 FCC Rcd at 4316.

and at the FCC the lack of clarity for the justification of awarding high-cost support (i.e. designating a competitive ETC) resulted in many ETC certifications based on varieties of reasonings. In an unfortunately rare demonstration of rationality, one decision said “The issue is whether, to receive universal service support, the Board should require [a carrier] to offer something like ‘universal’ coverage.”⁵ As this small voice was uncommon in the cacophony of confusion, some guidelines are surely necessary.

The Joint Board recommended permissive guidelines to include the financial viability of the prospective provider, a demonstrated capability and commitment to provide service throughout the designated area, the ability to maintain service in emergency situations, and consumer protection requirements. The Commission has already started a gentle trend towards standards with the Virginia Cellular and Highland Cellular orders.

In its recommendation of guidelines, the Joint Board said “[W]e reject the arguments of some commenters that the current ETC criteria should not be expanded.” It went on to encourage a “fact-intensive analysis.”⁶ It further indicated that if the level of support is sufficiently high, that there should be a limit on the number of ETCs designated to serve in an area due to the impact on the fund.⁷ Perhaps the most empowering recommendation offered by the Joint Board is in regard to the annual review

⁵ See *In re: Designation of Eligible Telecommunications Carriers Under the Telecommunications Act of 1996 (In re: RCC Atlantic, Inc. d/b/a Unice)*, State of Vermont Public Service Board, March 13, 2003, Docket No. 5918, p. 21.

⁶ *Recommended Decision*, 19 FCC Rcd at 4262, para. 12.

⁷ *Recommended Decision*, 19 FCC Rcd at 4274, para. 43.

process where it encourages state commissions to “examine compliance with build-out plans” and where a failure to comply is discovered, to withhold or rescind certification.⁸

Primary Line

By a slim majority and with divisions among that majority⁹, the Joint Board suggested rebasing high-cost support flowing to a rural carrier’s study area on a single connection. To mitigate financial devastation to an incumbent rural carrier, members of the majority proposed alternatives including “restatement,” “lump sum” and “hold harmless” provisions to accompany the “primary line” restriction. Not only is the primary line concept administratively unworkable, but the alternatives proposed to prevent degradation of service are fraught with disaster for rural customers and the policy of universal service¹⁰.

The restatement proposal recognizes that a rural carrier’s high-cost support is based on its total embedded costs. In argument, the proposal suggests that the incumbent local exchange carrier will receive the same amount of support whether it is based on dollars per line or dollars per primary line as long as the embedded cost is used as the basis for support. However, if the support identified with a single primary line goes away (i.e. the primary line is lost to a competitor), recovery will be insufficient because the

⁸ *Recommended Decision*, 19 FCC Rcd at 4275-76, paras. 47 and 48.

⁹ In a 5-3 majority, Commissioner Kevin J. Martin, as a member of the majority, supported a primary line policy only with the inclusion of the hold harmless provision, *Recommended Decision*, Separate Statement of Commissioner Kevin J. Martin, 19 FCC Rcd at 4317.

¹⁰ See *Recommended Decision*, Separate Statement of Commissioner Lila A Jaber, 19 FCC Rcd 4310 and Separate Statement of Commissioner Thomas J. Dunleavy, 19 FCC Rcd at 4312.

embedded cost has not changed. The embedded cost is created by investment in a network, not a line.

At best the lump sum proposal is aimed at making whole the ILEC for investments made under its responsibility as carrier of last resort. Under this alternative, only future loss of primary lines would cause a reduction in high-cost support. Like the restatement proposal, however, the embedded costs have not been reduced and recovery would become insufficient in violation of Section 254 of the 1996 Act.

The hold harmless proposal caps CLEC per-line support upon entry and allows a CLEC to collect USF support only for customers who designate their service as the primary line. This proposal does not cap ILEC per-line support.

Aimed at winning the acceptance of rural ILECs and assuring them of future support for service provided under their COLR responsibilities, the proposal comes up short. The Joint Board recommendation provides little assurance. Without such assurance, the social contract between government and ILEC embodied in COLR fails and with it the policy of universal service.

Key to the Joint Board's recommendation of these proposals is a cap on the per-line support upon the designation of a competitive ETC¹¹. Except for an annual adjustment based on an index factor, the total amount of support for a study area would not increase under the rebasing or lump sum proposals. The cap would apply to each ETC. Justification for the per-primary line cap is that if the incumbent's cost recovery is

¹¹ *Recommended Decision*, "[W]e recommend that high-cost support in areas served by rural carriers be capped on a per-primary line basis when a competitive ETC is present or when a competitive ETC enters the market....," para. 108.

based on its embedded network costs, but calculated on a per-line distribution, then as it loses primary lines to a competitor the incumbent's per-line support must increase to achieve sufficient recovery. The incumbent's cost per line has gone up. At the same time, the competitor's amount of per-line support is equal to the incumbent's, thus the competitor's recovery per line has increased while its costs have not changed. Surely this is an easily recognizable flaw in the "competitively neutral" scheme.

Under the hold harmless proposal the per-line cap would only apply to competitive carriers likely resulting in an increasing amount of support to each study area because the incumbent recovery per line would be adjusted upward as its primary lines are captured by competitors. At the same time a competitor's total support would increase with each primary line it captures from the incumbent.

While in no way limiting the number of competitors that might draw universal service fund support in a study area, the capping of USF absolutely limits the ability of the COLR to maintain or restore infrastructure following an emergency. In recent years (including this one) Alaska has been devastated by wildfires and floods and earthquakes are not uncommon. A cap with indexed growth allows no realistic method for funding extraordinary maintenance. Capital expenditures for recovery, expansion and upgrading to meet the demands of national security and law enforcement agencies would be limited to the annual composite depreciation dollars plus the indexing factor. Rising labor costs and unexpected business expenses (i.e. workman's compensation and health insurance) would result in shifting of funds from intended construction and maintenance projects to

daily costs of doing business. As infrastructure and customer service receive insufficient funding, the ability of the COLR to provide universal service dissipates.

Each of the three alternatives offered to cushion the detrimental impact of the primary line proposal -- rebasing, lump sum and hold harmless -- were put forward because the primary line proposal itself is contrary to Section 254(b)(5) which demands predictable and sufficient support. The policy of universal service has been codified in the Act. It is not a temporary policy. Sufficient support may not be phased out. We agree with Joint Board members Adelstein, Rowe and Thompson who wrote "We disagree, however, with the majority's recommendation to limit funding to primary lines. We believe it is inconsistent with Congress' intent when codifying the Universal Service Provisions of the 1996 Act."¹²

If rationale could be found to attempt to institutionalize a primary line restriction without threatening universal service, the administrative challenge of such implementation would range from daunting to impossible. How many primary lines might be in each house? Might there be more than one household at a residential address? Would unmarried couples living in one residence be allowed two primary lines and married couples only one? Would a second home (vacation home) be allowed a primary line and, if so, would a motor home be justification for a cellular phone as a second primary line? Would verification of primary line be circumvented if a person received billing for different lines at a street address and a post office address? Can a

¹² See *Recommended Decision*, Joint Separate Statement of Commissioners Jonathan S. Adelstein, G. Nanette Thompson, Regulatory Commission of Alaska, and Bob Rowe, Montana Public Service Commission, 19 FCC Rcd at 4318.

dependent child have a primary line while attending college? What if that child lives at his parents' residence while matriculating? How often would a person be permitted to change his designation of primary line provider? If "slamming" was a concern in choosing long distance carriers, what would this be like?

And what of the impact of the primary line policy on rural businesses? In a letter to Joint Board members Abernathy and Thompson, Senator Ted Stevens wrote "I also worry that limiting support solely to primary lines would also become burdensome on small businesses operating in rural areas because they would be forced to pay higher rates for their telecommunications services in high-cost areas than they would pay in urban areas."¹³

We think these combined questions and others raise a far more formidable warning than that stated by the majority: "We recognize that implementing support for a single line connection may present significant administrative challenges."¹⁴

Conclusion

The establishment of federal guidelines for ETC proceedings is necessary and will be welcomed especially by rural companies and customers. Support is mandated to be explicit, yet that one recipient's support is based on another's costs, defies logic. The

¹³ Letter from U.S. Senator Ted Stevens, Alaska to Commissioner Kathleen Q. Abernathy, Universal Service Joint Board Chairperson and G. Nanette Thompson, Universal Service Joint Board State Chairperson, January 22, 2004.

¹⁴ *Recommended Decision*, 19 FCC Rcd at 4280, para. 57.

threat to the high-cost support for our networks, caused by the current chaotic environment, threatens the very concept of universal service in America.

A shift to a “primary line” basis for network cost recovery, with or without its attendant apologies of “restatement,” “lump sum” and “hold harmless,” will wreak devastation on rural telephony. We are confident that the Commission will recognize the weakness of the concept and its threat to universal service and we look forward to working diligently with the Commission to develop policies that will meet the dictates of the 1996 Act and serve all communications customers.

Dated this 6th day of August, 2004.

ALASKA TELEPHONE ASSOCIATION

By: _____
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